U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, NY 10007

December 24, 2018

BY ECF
Honorable Paul A. Engelmayer
United States District Judge
40 Foley Square
New York, NY 10007

Re: *Reclaim the Records, et al. v. U.S. Department of Veterans Affairs*,
       18 Civ. 8449 (PAE)

Dear Judge Engelmayer:

This Office represents the United States Department of Veterans Affairs (the "VA") in this lawsuit involving a Freedom of Information Act ("FOIA") request filed by Plaintiff Brooke Ganz seeking information from the Beneficiary Identification Records Locator Subsystem ("BIRLS"), a database maintained by the VA. For the following reasons, I write to respectfully request an adjournment of the initial pre-trial conference, currently scheduled for January 8, 2019, by at least sixty days, and a corresponding extension of the parties' deadline to submit their joint pre-conference materials to one week before the initial conference (Dkt. No. 12).

In this action, Plaintiffs seek certain personal data from the BIRLS database for deceased veterans, that they claim was, at least in part, previously released to the genealogy website Ancestry.com in a prior FOIA proceeding. After that release, the VA became aware that the material released included data on living individuals. Once the error was discovered, VA was required to work with Ancestry to exclude that information and offer redress to those living individuals.

The VA is unable at this time to determine if it can (1) release the data previously provided to Ancestry.com, which consisted of data for millions of individuals, and (2) update that release to the present day, without significant efforts to confirm that none of the data sought involves the data of living service members and thus is precluded from release. Over the last few weeks, the VA, including both the Veterans Benefits Administration ("VBA"), which is the custodian of the data, and the Veterans Health Administration ("VHA"), which participated in the analysis of the data released to Ancestry.com, have been working to see if there is a way to confirm that the individuals whose data would be the subject of Plaintiffs' request are, in fact, deceased. This involves developing a methodology for a statistical analysis of the data using other databases containing death information that is available to the

VA, and evaluating whether that statistical analysis can provide sufficient comfort that no living individual's private data is subject to release. The Government is respectfully requesting the adjournment to provide the VA with additional time to develop that methodology, evaluate whether the analysis can provide sufficient comfort, and if so, determine how long the analysis will take. The additional time will allow the VA to determine whether it can release any of the data requested, and if so, on what time frame, allowing the parties to potentially narrow the issues before the Court prior to the initial conference.

The parties previously sought an adjournment of the initial conference, which the Court granted. Counsel for Plaintiffs consents to the requested adjournment. The parties conferred as to their availability for a conference, and both parties are available the weeks of March 18 and March 25, 2019. Counsel for Plaintiffs is unavailable in February due to two back-to-back trials, and the undersigned is unavailable the first week of March due to a previously scheduled vacation.

We thank the Court for its consideration of this submission.

Respectfully,

GEOFFREY S. BERMAN
United States Attorney

Granted. The Court hereby adjourns the initial pre-trial conference until March 18, 2019 at 2:30 p.m. Pre-trial submissions are due on March 14, 2019.

SO ORDERED.

Paul A. Engelmayer

12/26/18

PAUL A. ENGELMAYER
United States District Judge

By: */s/ Sharanya Mohan*
SHARANYA MOHAN
Assistant United States Attorney
86 Chambers Street, Third Floor
New York, NY 10007
Tel: (212) 637-2737
Fax: (212) 637-2786
sharanya.mohan@usdoj.gov